1316.

SUPREME COURT OF THE UNITED STATES.

No. 184.

EVARISTE BLANC, PLAINTIFF IN ERROR,

vs.

GEORGE W. LAFAYETTE AND JOHN HAGAN.

IN ERROR TO THE SUPREME COURT OF LOUISIANA.

INDEX.

	Original.	Print.
Petition	1	2
Citation and sheriff's return	4	3
Exceptions to petition	5	4
Exceptions set aside	5	4
Answer to petition	6	4
Supplemental answer	8	5
Duces tecum	9	6
Order of court	10	6
Testimony taken in open court	11	6
Testimony of Bmy. Bacas	12	7
Testimony of Rich'd Hagan	13	7
Testimony of Pierre Purcy	14	8
Duces tecum	17	9
Testimony of Pre. Heno	19	10
Testimony of Josh. Pilie	21	11
Trudeau's plans offered in evidence	23	12
Certificate of A. Guillet	24	13
Testimony of Joseph Pilie	25	13
Judgment of parish court	26	14
Petition of appeal	27	14
Appeal granted	28	14
Appeal bond	28	15
Clerk's certificate	29	15
Opinion of supreme court	30	16
Judgment of supreme court	38	19
Writ of error	39	19
Allowance of writ of error	40	20
Citation	41	20
Petition for writ of error	44	21
Bond to prosecute writ	45	21
Certificates of clerk and judge	47	22

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STATE OF LOUISIANA,
Parish court, for the parish and city of New Orleans:

G. W. LAFAYETTE and al.,
vs.
E. BLANC. } No. 13,930.

Petition, filed May 1st, 184 .

To the honorable parish court of the parish of Orleans.

The petition of George Washington Lafayette, living and residing at Paris, in France, and of John Hagan, living and residing at New Orleans, respectfully shows:

That your petitioners are the lawful owners and actual possessors of a tract of land, lying in the rear of the city of New Orleans, bounded on the north by Orleans street, on the south by Common street, on the west by a line running from a point on Orleans street, between Roman and Derbigne streets, to the corner of Miro and Common streets, and on the east by a line running from a point on Orleans, between Derbigne and Claiborne streets, to a point on Common street, between Robertson and Claiborne streets.

The said tract of land is one of those which were granted to the late Major General Lafayette by, and located in pursuance of, the 4th section of an act of Congress of March 3d, 1803, (1 vol. Land Laws, 491,) the 14th section of an act of Congress of March 27th, 1804, (ibid 513,) the 8th section of an act of Congress of March 2d, 1805, (ibid 522,) and the 12th section of an act of Congress of the 21st of April, 1806, (ibid 537;) and that the patent for said tract of land was issued on the 4th of July, 1825, by John Quincy Adams, then the President of the United States; a duly certified copy of which patent has been deposited in the office of D. L. McKay, notary public in and for the parish of Orleans, on the 10th of December, 1838.

That your petitioner, John Hagan, has become the owner of eight undivided ninths of said tracts of land, by divers mesne conveyances emanating from the late General Lafayette, who died in 1834, and from Madame de Lasteyne and Madame de Latour Maubourg, two of his children and heirs; and that your petitioner, George Washington Lafayette, became the owner of the remaining ninth by inheritance from the said General Lafayette, his father.

That your petitioner and their predecessors have long since taken possession of the said land, and are now in the possession thereof; that they have cleared and otherwise *improve* the same; and that they have procured a plan thereof to be made by Joseph Pilie, surveyor, on which the said property is divided into lots and squares, and streets are laid; which plan is dated, and now deposited in the office of D. L. McKay, notary public.

That your petitioners were lately proceeding to sell the said tract of land at public auction, and according to the aforesaid plan, when they ascertained that Evariste Blanc had slandered their title to a portion of the said land, and pretended to be the owner thereof, to wit, of the triangle inclosed by Prieur street, Common street, and the aforesaid rear or west line, running from Orleans to Common streets, and embracing the squares designated in the aforesaid plan by numbers 33, 34, 35, 36, 37, 38, 39, 40, 41 and 42; and that, by *this thining* doubt on and publicly slandering their said title, the said Evariste Blanc prevented them from making an adventageous sale of the aforesaid portion of their said property, to their damage five thousand dollars.

Petitioners show, that, although amicably requested, the said Evariste Blanc yet continues to pretend that he is the owner of the aforesaid piece of land.

Whereupon petitioners pray that said Evariste Blanc may be cited, that he may be ordered to produce his title to the aforesaid triangle, or tenth squares of land, if any he has; that, if he should not produce any title, or if his title when exhibited should be found by this honorable court to be invalid, either absolutely or as against the title of the petitioners, he may be ordered to *direct* from asserting any claim to the said land, and enjoined from pretending to be the owner thereof; and also to pay to your petitioners five thousand dollars damages; and that, if his title should be *deceseid* to be superior to that of the petitioners, he may be further ordered to pay to the petitioners two thousand dollars for improvements, with costs of suit, and general relief, &c.

Signed, L. PIERCE,
L. JANIN,
GEO. EUSTIS,
Of counsel.

Citation.

The State of Louisiana to Mr. Evariste Blanc, N. Orleans:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the parish court for the city and parish of Orleans, in ten days after the service hereof.

Witness the honorable Chs. Maurian, judge of the said court, the 1st day of May, in the year of our Lord 1841.

Signed, H. PITOT, *D'y Clerk.*

G. W. LAFAYETTE and al., vs. E. BLANC. } No. 13,930.

Received 1st May, 1841, and on the 4th served copy of petition and citation on E. Blanc, by handing the same to his son, a free person over 14 years. Returned 5th May, 1841.

Signed, A. MURPHY, *D'y Sh'f.*

Exceptions filed May 8th, 1841.

To the honorable parish court of the parish and city of New Orleans, the exceptions of Evariste Blanc to the petition filed in this honorable court against him, by George W. Lafayette and John Hagan, respectfully shews:

That the suit brought by the plaintiffs against him, is neither a petitory nor a possessory action, and there is no other actions given by the laws of Louisiana, in relation to the title or possession of real property.

Your respondent further excepts to the suit of a personal action for damages, that no sufficient cause of action is stated in the petition.

If the action of the plaintiffs be one to compel him to produce his title or institute a suit, he denies that any such action is given, or remedy allowed by the laws of the State.

For which reasons he excepts and prays that the plaintiffs' petition may be dismissed at their costs.

And for all other relief which the law affords, as in duty bound, &c.

(Signed) ISAAC T. PRESTON,
Attorney for the defendant.

Exceptions set aside, Saturday, June 5, 1841.

This day came on to be tried before the court the exception filed by defendant in this case.

L. JANIN, Esq.,
For plaintiffs.
I. T. PRESTON, Esq.,
For defendant.

When, after hearing counsel, no legal ground being thereon in support of said exception, it is ordered by the court that the same be set aside, and the defendant ordered to answer on the merits.

Answer filed June 9th, 1841.

To the honorable parish court of the parish and city of New Orleans, the answer of Evariste Blanc, to the petition, filed in this honorable court against him by John Hagan and George Washington Lafayette, respectfully shews:

That, reserving all exceptions heretofore filed in this case, your respondent denies that the plaintiffs possess the rights of the late Major General Lafayette, to the land claim in the rear of the city of New Orleans, described in their petition, and require strict proof that they possess said rights.

Your respondent alleges that he is and has been in the peaceable and uninterrupted possession as owner, for more than a year, of a tract of land, having six arpents front on the canal Carondelet, and running back between parallel lines to the line of the late John Gravier's plantation, marked on the public surveys of that part of the city with the name of Louis Liotand; and he denies that the plaintiffs possess or have ever possessed any part of said tract of land.

Your respondent admits that he has claimed the said tract of land as his own, and denied that any other person had title or possession of the same, but expressly denies that he is bound to try the title to said tract of land in this suit, averring that he is ready and willing to try titles to said tract of land with any claimant of the same, whenever a formal petitory action for the same is instituted against him.

Wherefore he prays that the plaintiffs' petition may be dismissed with costs, and that he may have all other and further relief which justice, equity, and the nature of the case requires; and he further prays for a trial by jury.

As in duty bound, &c.

("Signed") ISAAC T. PRESTON,
Attorney for respondent.

Affidavit filed August 2d, 1841.

LAFAYETTE & HAGAN
vs.
E BLANC.

Louis Janin, being duly sworn, deposes that he is one of the counsel of the plaintiffs in this suit, that both of them are absent from this city, and that the testimony of Campanel, Talon, Touchy, Vance, Arthur, and ———, in answer to the interrogatories filed on the 31st ult., is material for the cause of the plaintiff.

("Signed") LS. JANIN.

Sworn to and subscribed before me, N. Orleans, August 2, 1841.

("Signed") H. PITOT, *Dep'y Clerk.*

Supplemental answer filed November 11th, 1843.

To the honorable parish court, of the parish and city of New Orleans, the supplemental answer of Evariste Blanc, filed by leave of the court first had, to the petition filed in this honorable court against him, by John Hagan and George W. Lafayette, respectfully shews:

That should the titles to the property in controversy be inquired into in this suit, and not otherwise, against which he still protests, your respondent alleges that he and those under whom he claims title, have held and possessed the property in controversy, in good faith and by virtue of just titles, derived from the Spanish government, and confirmed by the Government of the United States, for more than thirty years before the institution of this suit, and he pleads the prescriptions of ten, twenty, and thirty years against the demand of the plaintiffs, and that he may have judgment against said demand with costs, and for all other relief the nature of his case may require.

And as in duty bound, &c.

("Signed") ISAAC T. PRESTON,
Attorney for defendant.

Let this supplemental answer be filed.

("Signed") CHAS. MAURIAN, *Judge.*

Duces tecum.

Parish court, in and for the parish and city of New Orleans, November 14th, 1843.

HAGAN & LAFAYETTE
vs.
EVARISTE BLANC.

On motion of Isaac T. Preston, of counsel for defendant, it is ordered, that the mayor of the city bring into court, as evidence in this case, the plan of the city and its environs made by Pintado, and obtained by the corporation from him in Havana.

And further, that Laurent Millaudon be ordered to produce in court forthwith, as evidence in the cause, a plan made by Carlos Trudeau, late surveyor general of Louisiana, of the city of New Orleans and its environs, under the orders of the late Spanish government.

Extract from the minutes. Clerk's Office, *Nov.* 14, 1843.
(Signed) LOUIS R. COURTIN,
D'y Clerk.

Rec'd, 14th November, 1843, and on the same day served copies of the within order on L. Millaudon, by leaving the same at his domicil, Bourbon street, between St. Louis and Conti streets, with Mr. Morgan, his clerk, and on the mayor in person. Ret'd 4th November, 1843.
(Signed) A. MURPHY,
D'y Sheriff.

Order.

Tuesday, Nov. 14, 1843.

On motion of Isaac T. Preston, esq., of counsel for the defendant, it is ordered by the counsel, that the mayor of the city bring into court, as evidence in this case, that plan of the city and its environs made by Pintado, and obtained by the corporation from him in Havana; and further, that Laurent Millaudon be ordered to produce in court forthwith, as evidence in this cause, a plan made by Carlos Trudeau, late surveyor general of Louisiana, of the city of New Orleans and its environs, under the orders of the late Spanish government.

Continuance.

This cause came on this day to be tried before the court.
L. Janin, Pierce & Eustis, esq'res, for plaintiffs.
Isaac T. Preston, for defendants.
After hearing testimony for some time, the same was continued until Thursday, the 5th of December next, by preference.

Testimony taken in open court on the 14th November, 1843.

LAFAYETTE & AL.
vs.
E. BLANC.
Parish court.

It is admitted that the plaintiffs have acquired the rights of Gen. Lafayette on the lands in dispute.

Plaintiffs offer in evidence documents marked A.

Plaintiffs give in evidence extracts from the records of the land office in this city.—B.

It is agreed that the act of Congress referred to may be read in evidence.

By leave of the court, Mr. Preston, of counsel for defendant, files document marked C.

Plaintiffs file in evidence a survey and proccss verbal of Lafon, dated 23d June, 1805, and plans annexed to it. It is agreed that those documents may be taken in original before the Supreme Court.—D.

Defendant offers in evidence documents Nos. 1, 2, 3.

Plaintiffs give in evidence the plan of the property, sold in 1841 by Hagan & Lafayette, made by Joseph Pilie, surveyor on the , and deposited in the office of D. S. McKay, notary public.

It is agreed that the line running north 21° E., 4,372 chains, represented on the plat of the patent in the boundary line nearest to the city of the Lafayette location, and it is also the line distant 600 yards from the fortifications of the city of New Orleans, which separates the lands confirmed to the city of New Orleans, by the 3d section of the act of Congress of the 3d March, 1807, from the entry and location of General Lafayette.

Bmy. Bacas, for defendant, sworn, says: That he knows the family of Liotand, comprising Mrs. Liotand and three children; that Mr. F. Liotand died in 1803 or 1804, François died first, L. Liotand second, the mother next, and the sister last; that Miss Mannon is the same as Miss Marie Louise.

Defendant gives in evidence the claims of J. B. Castillon to the tract of land on the bayou road extending to Gravier's line, the claim of Griffon on the said road extending to said line, the claim of Lebreton D'Orgenoy and Carlos Guardiola, fronting on the said road and extending to the said line of Gravier, of which said claims copies will be taken out of the American State papers on public lands. Those claims are reported in the reports of the commissioners of 1811.

Richard Hagan, for defendant, sworn, says: That the wood on the land in dispute was cut down in 1839; that it is to his knowledge that Mr. Hagan paid for so doing; that it is to his knowledge that, in May, 1841, Mr. Hagan made a large sale of the greater part of this land in lots; that great many of the purchasers improved their lots; that the land was cleared to the back line; that the portion claimed by Mr. Blanc was also cleared by Mr. Hagan.

That never, to his knowledge, any person claimed any portion of said land before it was cleared; that he thinks Mr. Hagan became purchaser of said land in 1835; that he does not know whether Mr. Blanc had ever taken possession of any portion of the land.

He knows that a fence was put up since the land was cleared; that he is not aware that Mr. John Hagan paid taxes on a tract of land in the rear of the city for himself and as agent for Gen. Lafayette.

That he heard but recently that Mr. Blanc had any claims on said

land; that Mr. Blanc notified him at the time the land was first offered for sale.

Cross examination.

Witness says, that Mr. Hagan owns the rear of Gravier's plantation.

Defendant offers in evidence document No 4.

Pierre Purcy, for defendant, sworn, says: That his father resided at Mr. Blanc's as overseer at least twenty years ago; that he recollects to have been on Mr. Blanc's property with his father on the canal Carondelet; that he recollects that his father had negroes belonging to E. Blanc on said land; that his father employed said negroes in clearing said land for Mr. Blanc; that the property thus cleared is the same as the one where a house is built, and that there is on said land now a garden in cultivation. Witness does not recollect *it* at what time his father died; that he (witness) is now about forty-five or forty-six years old, and that he was about *to* twenty-two years old when his father cleared said land; that he does not recollect when the house was built, but he knows the house and enclosure were built for a long time.

Cross examination.

Witness says, that he never cut down wood himself, but used to follow his father in a skiff; that the land was cleared from the canal down; that the negroes did cut wood on one side of the canal only—on the south side; that he did not know Mr. Griffon's property at that time, nor those of Griffon, Lafayette, or Pontalba; all he knows is that he went cutting wood with his father, who told him that the land where they were cutting was Mr. Blanc's property; his father did *built* a house there, nor made an inclosure; that he never saw any other person cutting wood on said land or there about; that he does not know what *is* the dimensions of the land belonging to Mr. Blanc; he does not know what is the front one [on] canal Carondelet; he does not know what is the depth of said land; he does not know how far it is from the city; he does not know how far it is from the bayou St. John; that he went so often on said lands that he cannot tell how often.

He says that he does not know what was done with the wood cut down; he does not know whether the negroes took the wood away or not.

Re-examined by defendant.

Witness says, that the land his father cleared is the same as the one where Mr. Blanc's house and garden now are.

Cross examination resumed.

Witness says, that his father cleared the land of all the latanier thereon.

Timothy Cunan, for defendant, sworn, says: That he knows there was a house and garden on the left side of canal Carondelet for the last five or six years; that it is the last house on that side of the canal; that the house looked at that time as an old improvement.

He knows that the whole tract belonging to Mr. Blanc was fenced on the eastern line of Mr. Blanc; he fenced in from the canal Carondelet to Common street, and the western line from canal Carondelet to Canal street, in June or July, 1841—post and rail fence, three rails high.

That the distance from the two lines is about six hundred feet, or perhaps more.

Cross examined.

That he made the whole fencing at the same time; that he did not make a fence on Carondelet canal or on Common street, nor never saw any.

That the fence is there yet, but perhaps some of the rails were taken away; that the fence is still there; that he went there last Sunday.

Chief examination resumed.

That the enclosure of the garden he has known for the last five years.

Order.

TUESDAY, *November 28th*, 1843.

This case came on this day before the court; the parties not being ready for trial, the same was continued.

Duces tecum.

STATE OF LOUISIANA,
Parish court, for the parish and city of New Orleans.

SATURDAY, *December 2d*, 1843.

Present: The honorable Charles Maurian, judge.

LAFAYETTE AND AL.
vs.
EVTE. BLANC.

On motion of Isaac T. Preston, esq., of counsel for the defendant, it is ordered by the court that Laurent Millaudon do produce in court, on Monday, the 4th instant, at 10 o'clock, A. M., as evidence in this cause, a plan made by Carlos Trudeau, late surveyor general of Louisiana of the late Spanish government.

Extract from the minutes.

(Signed) J. OLLIE, *Deputy clerk.*

Received December 2d, 1843, and on the same day served copy of the within order on Laurent Millaudon, esq., in person.

Returned 4th December, 1843.

(Signed) A. MURPHY, *Sheriff.*

Order and continuance.

TUESDAY, *January 9th*, 1844.

This case came on this day for trial, and *were* continued to be fixed by preference for want of time.

Order and continuance.

TUESDAY, *January* 23*d*, 1844.

This case came on this day for trial before the court, and was continued, to be fixed by preference for want of witnesses.

Duces tecum.

G. W. LAFAYETTE AND AL. vs. E. BLANC. } 13,930

PARISH COURT, *February* 19*th*, 1844.

On motion of Isaac T. Preston, esq., of counsel for the defendant, it is ordered by the court that L. Millaudon do produce in court, on Tuesday next, the 20th instant, at 10 o'clock, A. M., as evidence in this case, a plan made by Carlos Trudeau, late surveyor general of Louisiana, of the city of New Orleans and its environs, under the orders of the late Spanish government.

Extract from the minutes, clerk's office, New Orleans, February 19th, 1844.

(Signed) F. MAXENT, *Deputy clerk.*

Order and continuance.

TUESDAY, *February* 20, 1844.

This cause came on this day to be tried before the the court.

JANIN & EUSTIS, esqs., *for plaintiffs.*
I. T. PRESTON, esq., *for defendant.*

After hearing testimony and arguments of counsel until a late hour, said cause was continued to be fixed by preference.

Testimony taken in open court, filed February 20, 1844.

G. W. LAFAYETTE AND AL. vs. ETE. BLANC. } 13,930

Parish court.

Plaintiffs introduce in evidence the testimony of E. Blanc, in the case of Kenton vs. Pontalba, taken on the 31st of January, 1838, Nos. 13,493 of the docket of the district court.

Pre. Heno, for defendant sworn, says; That he knows the property now in dispute between the parties. It is to witnesses knowledge that the defendant has fenced in the said property on the side of the city; said fence is made on Mr. Blanc's line; witness has seen the fence put up, and it still exists; witness was employed by Mr. Blanc in order to prevent people from cutting wood on said property.

Cross examined.

Witness knows Mr. Hagan's property, which is the land granted to Lafayette in the rear of the city, and which Mr. Hagan cleared some-

time ago; he then understood that Mr. Hagan encroached upon Mr. Blanc's line; witness says that Mr. Blanc fenced in part of the land cleared by Mr. Hagan; does not know the rear line of Mr. Hagan; does not know what portion of the defendant's line is claimed by plaintiff; he always understood that a small triangle was in dispute between them; the fence put up by Mr. Blanc is on this side of canal Galvez, on the portion of the land which was cleared by Mr. Hagan; Mr. Blanc made the fence after Mr. Hagan had cleared the lands. There is in Galvez street a considerable canal, made by the municipality, and Mr. Blanc's fence has been put up after this canal had been made; does not recollect when said canal was made by the municipality; does not recollect exactly when Mr. Hagan cleared the land. The question being asked whether ten or twenty years ago people of the city did not cut wood in the rear of the city, witness says that sometimes crowds of people would cut wood there, but they were prevented sometimes by Gravier, sometimes by McDonough, and others.

Chief examination resumed.

Witness was employed by Mr. Blanc in 1837 and 1838; witness never knew the land until Mr. Blanc told him that he had land there; witness does not know if the land was fenced in on Kenton's side or not; witness has seen a small house on Mr. Blanc's land at the Half Moon of the canal Carondelet, and a field in cultivation; the house was there when witness took charge of the land of Mr. Blanc; the land was cleared by Mr. Hagan.

Josh. Pilie, for plaintiffs sworn, says, that he knows well the location of the land in dispute in this suit. It is to witness' knowledge that M. Hagan cleared said land some years ago; witness knows that there was a fence on the side of the land which Mr. Blanc claims and the Liotand; said fence encroached on the land claimed by Hagan; witness does not know exactly when the fence was made, but it was some years ago; witness knows that Mr. Hagan has made several auction sales of lots of part of the Lafayette concession; witness does not recollect whether the fence existed at the time those sales took place; he knows that the fence was made after the land was cleared; witness was employed by Mr. Hagan to make the plan for the portion claimed by him, but at the same time witness remarked to him that the land of Mr. Blanc covered the triangle now in dispute; then witness made two marks on the plan in order to shew the position of land which were claimed by Mr. Blanc; witness told Mr. Hagan afterwards, that he thought Mr. Blanc's claim good.

Some years ago, when these lands were of little value, a number of persons were in the habit of cutting wood there, and the owners did not pay much attention to it. Being asked whether twenty years ago there was any sign of corporal possession in this land, such as fences, clearings, witness' answer is, that he does not recollect that there was any thing of the kind. The Municipality No. 2 made the canal in Galvez street in 1838 and 1839, and a number of other canals. Witness thinks

he went twice as far as canal Galvez. The proprietors were to be taxed for making those canals and ditches, and witness thinks they were actually taxed, which gave rise to some contestation.

Canal Galvez is in Galvez street, about a right angle with Canal street; it is partly on the land claimed. (It is admitted that Mr. Joh. Pilie, the witness, gave the following testimony in the case of Theo. Nicobet and al. and Mr. Pontalba, No. 13,491 of the docket of the district court, to wit, " witness has been in this city since the latter part of 1804, and has always been a surveyor since he has been here, and consequently is well acquainted with the property around the city, and also with that in dispute; he was city surveyor for near 19 years; it is to his knowledge that persons generally cut wood back of the city indiscriminately, and he thinks that they continue to do so still; this was done on all parts of land near the city aback of it; he says he knows the property sold 1821, by B. Macarty to the corporation.")

Witness thinks that when he arrived in this country Mr. Lafin was deputy surveyor of the United States; he says that he first heard of the land claimed under the Liotand claims many years ago.

Cross examination.

The first time witness was acquainted with the claim, it was in the land office, either when Apper was clerk or Ebony; witness does not recollect how long he has known the lines of Blanc; he has been in the country since forty years; he has known the plan of Trudeau, showing the lines of Blanc at least twenty years ago, perhaps thirty years ago, perhaps less.

Plaintiffs offer in evidence two suits under the title of Municipality, No. 2, against Jno. McDonough, which are numbers 4,229 and 5,352, of the docket of the Supreme Court, which may be used by both parties in case of appeal.

Mr. Jh. Pilie recalled by defendant says, that it is to his knowledge that on the tax list it sometimes happens that persons are assessed as owners of property when in fact they are not, and that such has been the case with witness himself several times.

Defendant offers in evidence Trudeau's plan, made on the 1st of March, 1802, of which a copy will be drawn.

(It is agreed that Mr. Guillet's testimony may be taken and filed, and that Mr. Pilie may file a memorandum, stating as nearly as possible the period when the defendant's fence touching the line in dispute was put up.

Defendant offers in evidence the American State papers on public land, vols. 2 and 3, and particularly such parts as relates to the claim of Liotand, Griffon, Castillon, Guardevala, and Suary, for the purpose of showing that the land surveyed for Lafayette, the 23d June, 1805, was claimed by anterior titles.

Order and continuance.

TUESDAY, *March* 5, 1844.

This cause came on this day for trial before the court.

JANIN & EUSTIS,
For plaintiff.
ISAAC T. PRESTON.
For defendants.

After hearing arguments of counsel until a late hour, said cause was continued to to-morrow, at 10½ o'clock, A. M.

Certificate of Aimé Guillet, filed March 5, 1844.

LAFAYETTE AND HAGAN
vs.
E. BLANC.

Mr. Guillet is requested to give a certificate showing whether Mr. Evariste Blanc has lately, or within a number of years back, been assessed for taxes on property lying between canal Carondelet [and] Common street, the property of Joseph Kenton, and the property belonging to Lafayette & Hagan, and sold in lots in 1840 and 1841. If Mr. Blanc has been so assessed, Mr. Guillet will please certify for what year, the amount of the tax, and what the description of the property is.

In answer to the above question, I, Aimé Guillet, collector of taxes on real estates and slaves, for the years 1837, 1838, 1839, 1840, 1841, 1842, do hereby certify, that Mr. Evariste Blanc does not appear on the assessment rolls of the years above mentioned for the property alluded to in the above question.

New Orleans, the 4th March, 1841.

("Signed") A. GUILLET,
Collector.

Time to advise, March 6th, 1844.

This cause came on for trial pursuant to adjournment.

JANIN & EUSTIS, esqrs.
For plaintiff.
ISAAC T. PRESTON, esq.
For defendant.

After hearing arguments of counsel, the court took time to advise.

Testimony taken in open court.

Filed March 6th, 1844.

G. W. LAFAYETTE and al.
vs.
EVARISTE BLANC. } 13,930.

Parish court, March 6, 1844.

Joseph Pilie for plaintiff sworn says, that he has ascertained the date of the survey of the land of Hagan, made by him; it was done on the

13th June, 1841; he has ascertained the date from his books; the fence was not made at that time, it was put a few days after.

Cross examined.

That he has made the survey because the old marks were lost on account of the trees having been cut down.

(It is agreed that all the documents introduced in evidence in this case may be taken in the original in the Supreme Court in case of appeal.)

Judgment.

Parish court, in and for the parish and city of New Orleans.

G. W. LAFAYETTE and al
vs.
E. BLANC. } 13,930.

The parties having waived any further argument in this case, and consenting that a judgment pro forma be now entered for the defendant, with a view to a more speedy decision, in the last resort, and considering further, *considering* that the patent exhibited by the plaintiffs excludes in times any lands rightfully claimed by other persons, and that the tract of land possessed by the defendant was claimed by Liotand, and his claim was confirmed by the United States.

It is therefore ordered, adjudged, and decreed, that the defendant, Evariste Blanc, be quieted in this title and possession, as shown by the survey of Trudeau, to a tract of six arpents front on the canal Carondelet, bounded on one side by the title of Guardiola; and that the plaintiffs pay the costs of this suit.

New Orleans, May 20th, 1846.

("Signed") CHAS. MAURIAN, *Judge.*

Petition of appeal, filed May 27, 1844.

To the honorable parish court of the parish of Orleans.

The petition of George Washington Lafayette and John Hagan, respectfully shows:

That in the suit in which the petitioners are plaintiffs, and Evariste Blanc is defendant, a final judgment has been rendered by your honorable court, in which the petitioners are advised that there is error.

Wherefore the petitioners pray to be permitted to appeal from said judgment to the honorable supreme court of the State of Louisiana.

("Signed") LS. JANIN,
Attorney of petitioners.

Service of citation of appeal is hereby accepted for the appellee.

("Signed") H. A. BULLARD.
Of counsel.

Order.

Let an appeal be allowed in this case, returnable in the supreme court on the fourth Monday of June next, 1846, on the appellants

giving bond in the sum of one hundred fifty dollars, with L. Janin, esq., as surety, and bound as the law directs.

New Orleans, May 27th, 1846.

("Signed") CHAS. MAURIAN, *Judge.*

Bond.

Know all men by these presents, that we, Geo. W. Lafayette, John Hagan, and Louis Janin, are firmly bound unto Evariste Blanc, executors, administrators, and assigns, in the sum of one hundred and fifty dollars; for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated in the city of New Orleans, on this 27th day of May, in the year of our Lord one thousand eight hundred and forty-six.

Whereas the above bounden George W. Lafayette and John Hagan, this day filed a petition of appeal, for a final judgment rendered against them in the suit of themselves vs. Evariste Blanc, in the parish court for the parish and city of New Orleans, on the day of .

Now, the condition of the above obligation is such, that the above bound G. W. Lafayette and John Hagan shall prosecute their appeal, and shall satisfy *whate* judgment may be rendered against them, or that the same shall be satisfied by the proceeds of the sale of their estate, real or personal, if they be cast in the appeal; otherwise that the said Louis Janin, surety, shall be liable in their place.

G. W. LAFAYETTE & JOHN HAGAN,
By LS. JANIN, [L. S.] *Attorney.*

("Signed") LS. JANIN. [L. S.]

Signed, sealed, and delivered, in presence of—
VICTORE SERE.

STATE OF LOUISIANA,
Parish court, for the parish and city of New Orleans:

I hereby certify, that the above and foregoing 31 pages do contain all the testimonies adduced in this cause, and a full and complete transcript (except the documents of the records of the case wherein George W. Lafayette et al. are plaintiffs, and E. Blanc is defendant, instituted in this court, and now on the record thereof, under No. 13,930.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, on this 9th [L. S.] day of May, in the year of our Lord 1846, and the 70th of the American independence.

Signed, J. OLLIE, *D'y Clerk.*

I do hereby certify, that the aforegoing transcript of record contains all the matters of fact upon which this case was tried in the first instance. The evidence not copied in this record.

In faith whereof I have hereunto set my hand at the city of New Orleans on this 9th day of May, 1846, and the 70th year of the American independence.

Signed, CHARLES MAURIAN, *Judge.*

Judgment of the supreme court of the State of Louisiana, E. D.

Monday, January 17th, 1848.

The court met. Present, their honors G. Eustis, C. J., P. A. Rost, G. R. King, and Tho. Slidell, associate justices.

Geo. W. Lafayette et al., appellant,
vs.
Ete. Blanc, appellee.

Appeal from the parish court, in and for the parish and city of New Orleans.

In this cause the court this day delivered their opinion, in writing, in the words and figures following:

His honor, Geo. Eustis, C. J., did not sit in this cause, having been of counsel.

This action purports to be instituted against the defendant for slandering the plaintiff's title to waste lands; but as the fact of possession is left in doubt by the evidence, we will consider it as a petitory action.

The plaintiffs assert title to a tract of land situated in the rear of the city of New Orleans, under a patent issued in 1825, on a location made a short time previous, in pursuance of the provisions of several acts of Congress, granting lands to Gen. Lafayette for his services in the revolutionary war. They allege that the defendant claims title to a portion of said land; they pray that he may be ordered to produce his title, if any he have; and, finally, that they may be quieted in their title against his pretended claims.

The defendant alleges that he is, and has been for more than a year before the commencement of this suit, in quiet possession of a tract of land of six arpents front on the canal Carondelet, and running back between parallel lines to the line of the late John Gravier's plantation, marked on the public surveys of that part of the city with the name of Ls. Liotand; and he denies that the plaintiffs possess, or ever have posse[sse]d, any part of said land. He farther pleads the prescription of twenty and thirty years.

There was judgment in favor of the defendant, and the plaintiff appealed.

The extent of the conflict is shown by the evidence, and the only question for our consideration is, whether the land claimed by the defendant falls within the reservation of the patent, by virtue of which only such parts or parcels of the tract of land which it embraces are granted, as were not at the time it issued legally claimed by any other person or persons whatsoever.

The title on which the defendant relies may be stated as follows: In 1801, Louis Liotan presented a petition to the intendant, Morales, praying that a tract of land be granted to him, having six arpents front on the left bank of canal Carondelet, with the ordinary depth, if there should be such a depth vacant, being bounded on one side by the land of Carlos Guardiola, and on all the other sides by public land. He

states, as a reason which entitled him to the favorable notice of the intendant, that his object was to establish a large garden and drain the land, which would be advantageous to the public, and contribute to the salubrity of the city. He stipulated to conform to the regulations relating to grants of land.

On this petition an order was made in 1802, which is attested by the notary, Carlos Ximnenes, and is in these words: "Vistos pasese este expediento al agrimensor gnl. Dn. Carlos Trudeau para que en vista de el informe lo conveniente."

No report is either alleged or shown to have been made on this petition by the surveyor general, Trudeau. No farther action was had upon it. It appears to have remained in the land office, and was found there by Liotand, in 1813, in a bundle of papers bearing the superscription "instancias pendientes."

Soon after Liotan filed a claim in the land office, stating in his application, "this land is claimed by virtue of proceedings had before the Spanish intendency in 1801 and 1802, of which proceedings the accompanying document is a true copy, as taken from the original in the register's office for the eastern district of Louisiana.

On this claim a report was made by the register *of* receiver, stating that the land was claimed by virtue of an order of survey, dated in the year 1802. It was embraced in the second species of the first class of claims on which the board reported, as follows:

"We are of opinion that all the claims included under the second species of the first class are already confirmed by the act of Congress of the 12th of April, 1814."

The report bears date the 20th November, 1816, and was acted upon by the act of Congress of May 11th, 1820, which provided that "all claims embraced in this report, and recommended for confirmation, are confirmed."

It is not denied that the defendant is subrogated to the rights of Liotand, and our only inquiry is in relation to the nature of those rights.

In the case of Hooter vs. Tippett, 8 Martin, 637, in which the plaintiff set up on a claim similar to that of the defendant in this suit, the late supreme court said, "There is no order of survey; no decree of any kind is given by the intendant or his representative. The application stands unanswered. Now, supposing the parties to be in the situation in which they were before the relinquishment of the rights of the United States, would the plaintiff be able to eject the possessor of the land with such a paper; a paper which is the act of the party alone, and bears not the slightest intimation of the grantor's pleasure?"

The claim was held by the court to be destitute of merit, law, or equity.

In a subsequent case between the same parties, the court went farther, and held that a permission to settle, obtained on a requête, but not followed by actual settlement, did not give a right superior to that resulting from an actual settlement without permission; or, in other words, from naked possession. 5 M. S., 110.

These decisions are clearly correct, and under them we are bound to say that Liotand, never having had the actual possession of the land in controversy, had no lawful originable claim to it at the change of government. The defendant farther claims title under the first section of the act of Congress of the 12th of April, 1814, by which he alleges his claim to have been confirmed. That section only confirmed the title to lands claimed by virtue of incomplete French or Spanish grants, concessions, warrants, or orders of survey, granted prior to the 20th of December, 1803, and having a special and definite location. Liotand held none of those inchoate titles, nor was the location of his claim definite and certain, as this law seemed to require. The opinion expressed in the report that the claim was confirmed by that act, cannot supply those deficiencies. The facts of this part of the case do not materially differ from those of Drillon vs. Slack, 11 L. R., 591, in which the court held that the 1st section of the act of 1814 did not confirm claims unsupported by any written evidence of title emanating from the Spanish government.

The defendant's claim was not recommended for confirmation in the report, and of course was not confirmed by the act of 1820.

Had the defendant obtained a confirmation, it is probable it would not avail him in this controversy. This requête calls for one of the side lines of Guardiola, but does not state which of the side lines. This location, unsupported by any survey, or by actual possession, before the change of government, would be so indefinite and uncertain, to prejudice the plaintiffs. We take the rule to be, that in order that the confirmation may have the force and effect of patent, the description in the inchoate title, or in the act of Congress, must be such as will identify the land. If it will fit another place better, or equally well, it is defective, and will [not] protect the holder who can show no original possession against a subsequent location, made under the authority of Congress.

An attempt has been made to fix the location by means of a map of the city of New Orleans, and of the plantations around it, purporting to have been made in 1802, by Lareau Trudeau, in obedience to an order of the intendant, Morales, and of record in the land office. Had an order of survey been given on the requête, we might, perhaps, at this distance of time, presume, in the absence of the plat of survey and of the return of the surveyor, that the land was correctly represented on this map; but Liotand, when applying for the confirmation of his claim, never pretended that an order of survey had been obtained, or a survey made, and rested his application exclusively upon his requête and the statement of Ximenes thereon. Under that state of facts, the map adduced does not make proof of the location, and there is other evidence in the record which raises a strong presumption of its want of accuracy. The defendant's claim is designated on the map as "terreno solicitado pr. Dn. Luis Liotand;" adjoining it is another claim, designated as "terreno solicitado per Dn. Guilbert Guillemar," which is also embraced within the lines of the patent of the plaintiffs, and which nobody

claims. The register of the land office, who in 1816 gave it as his opinion that the defendant's claim had been confirmed by the act of 1814, had this plan in his keeping, and must have been aware of the location it gave to that claim. The report of the same officer, made to the General Land Office in 1825, with a view to the location of Gen. Lafayette's patent, that this land was at that time vacant, shows that he disregarded the map, and that he must have considered the proper location of Liotand's claim to be on the other side line of Guardiola's land, that location answering the description in the requête equally well.

Had the United States parted with their title in favor of the defendant, this case would not be easily distinguished from that of Lefevre vs. Coman & al., 11 L. R., 321.

In that case it was not shown that the settlement made by the defendant was upon either of the quarter sections which the plaintiff had acquired from the United States, and on that ground he was cast. In this case, no settlement whatever is shown to have been made by the defendant anterior to the date of the patent, and the calls of the requête are indefinite.

The defendant has failed to show either a title or a possession upon which prescription can be based, and we are clearly of opinion that the land in controversy was not lawfully claimed by him when the patent issued to Gen. Lafayette.

It is therefore ordered, adjudged, and decreed, that the judgment in this case be reversed. It is further ordered, that there be judgment in favor of the plaintiffs, and that they be forever quieted in their title and possession against all claims and pretensions of the defendant to the tract of land described in the petition, to wit, a triangular piece of ground lying in the rear of the city of New Orleans, bounded by Prieur street and Common street, and in the rear or west by a line running from a point on Orleans street, between Roman and Derbigny streets, to the corner of Miro and Common streets, and designated as squares Nos. thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight, thirty-nine, forty, forty-one, and forty-two, on a plan made by Louis Pilie, and deposited in the office of D. L. McKay, notary public, representing lands granted by the United States to Major Genl. Lafayette, by letters patent dated the 4th of July, 1825. It is further ordered, that the defendant pay costs in both courts.

Writ of error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the supreme court of the State of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you or some of you, between George W. Lafayette, and John Hagan and Evariste Blanc, of the city of New Orleans, a manifest error hath happened, to the great damage of the said Evariste Blanc, as by his complaint appears. We being willing that error, if any hath been, should

be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this twenty-first of January, [SEAL.] in the year of our Lord one thousand eight hundred and forty-eight.

ED. RANDOLPH,
Clerk of the U. S. circuit court and district of Louisiana.

Let a writ of error be allowed on the defendant entering into bond, with Samuel J. Peters as surety, in the sum of two thousand dollars, conditioned according to law.

J. McKINLEY,
One of the associate justices of the Supreme Court of the U. S.

Citation in error.

The United States of America, to George W. Lafayette and John Hagan, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, wherein Evariste Blanc is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this twenty-first day of January, [SEAL.] in the year of our Lord one thousand eight hundred and forty-eight.

J. McKINLEY,
One of the associate justices of the Supreme Court of the U.S.

Marshal's Return.

Service accepted, Jany. 28th, 1848.

L. JANIN,
Attorney for Lafayette & Hagan.

Petition.

To the hon. John McKinley, one of the judges of the Supreme Court of the United States.

The petition of Evariste Blanc, of the city of New Orleans, respectfully represents:

That on Monday, the tenth day of January, 1848, a final judgment was rendered by the supreme court of the State of Louisiana, the highest State court to which the cause could be carried, against your petitioner, in a suit at law in which John Hagan and George W. Lafayette were plaintiffs, and your petitioner was defendant.

That in said suit your petitioner asserted and set up title to the tract of land in controversy, under a confirmation by the commissioners for adjusting land titles in the eastern district of the State of Louisiana, and by virtue of the act of Congress of the eleventh of May, 1820, entitled "An act supplementary to the several acts for the adjustment of land claims in the State of Louisiana," and in which was drawn in question the construction of said acts of Congress, as well as of the treaty of cession between the French republic and the United States of 1803, and the decision of said court was upon the construction of said acts of Congress against the title of your petitioner thus set up, and as your petitioner conceives erroneous, and greatly to his prejudice.

For remedy whereof your petitioner prays a writ of error to the said supreme court of the State of Louisiana, returnable in the Supreme Court of the United States at its next term, on the first Monday in December next; and, as in duty, &c.

Signed, H. A. BULLARD,
For pl'ff in error.

(Endorsed.)

Supreme court of the State of Louisiana, E. D. Filed at New Orleans, January 28th, 1848.

(Signed) EUGENE LASERE, *Clerk.*

Bond.

Know all men by these presents, that we, Evariste Blanc, as principal, and Samuel J. Peters, as surety, are held and firmly bound unto George W. Lafayette and John Hagan in the full and just sum of two thousand dollars, to be paid to the said G. W. Lafayette and John Hagan, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seal, and dated this twenty-eighth day of January, in the year of our Lord one thousand eight hundred and forty-eight.

Whereas lately, in the supreme court of the State of Louisiana, in a suit depending in said supreme court, wherein George W. Lafayette and John Hagan were plaintiffs, and Evariste Blanc, defendant, judg-

ment was rendered against the said Evariste Blanc, defendant; and the said Evariste Blanc having obtained a writ of error, and filed a copy thereof in the clerk's office of the said supreme court, to reverse the judgment in the aforesaid suit, and citations directed to the said Geo. W. Lafayette and John Hagan, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the first Monday of December next.

Now, the condition of the above obligation is such, that if the said Evariste Blanc shall prosecute his writ to effect, and answer all damages and cost if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

Signed, EVARISTE BLANC, [L. S.]
" SAM. J. PETERS. [L. S.]

(Endorsed.)

Supreme court of the State of Louisiana, E. D. Filed at New Orleans, January 28th, 1848.

(Signed) EUGENE LASERE, *Clerk*.

UNITED STATES OF AMERICA,
Supreme court of the State of Louisiana, E. D.:

I, Eugene Lasere, clerk of the supreme court of the State of Louisiana for the eastern district, do hereby certify, that the foregoing forty-seven pages contain a true copy of the transcript of the proceedings had in parish court for the parish and city of New Orleans, in a certain suit wherein G. W. Lafayette et als. were plaintiffs, and Evariste Blanc was defendant; and also a true copy of the opinion delivered by this court in the said suit.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court at the city of New Orleans, this sixteenth day of November, 1848, and in the seventy-third year of the independence of the United States of America.

[SEAL.]

EUGENE LASERE, *Clerk*.

UNITED STATES OF AMERICA,
Supreme court of the State of Louisiana, E. D.:

I, Thomas Slidell, one of the associate justices of the supreme court of the State of Louisiana, do hereby certify, that Eugene Lasere is clerk of the supreme court for the eastern district; that the signature of Eugene Lasere to the within certificate is in the proper handwriting of him, the said clerk; that the certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof I have hereunto set my hand and seal, at the city of New Orleans, this 16th day of November, 1848.

THOMAS SLIDELL.

Filed 4th Dec., 1848.